

R E M A R K S

Claims 1-3 are pending and stand ready for further action on the merits.

Obviousness-type double patenting

Claims 1-3 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 of copending Application U.S. Serial Number 10/621,521 (hereinafter US '521) in view of Higuchi et al., JP 2000-070409 (hereinafter JP '409) (cited in the August 6, 2002 Information Disclosure Statement). Applicants respectfully traverse the rejection.

Applicants firmly believe that the presently claimed invention is not made obvious by the claimed invention in US '521. However, in order to advance prosecution, Applicants enclose herewith a Terminal Disclaimer (TD) over US '521. In legal principle, the filing of a TD simply serves the statutory function of removing the rejection of obviousness-type double patenting, and does not raise a presumption on the merits of the rejection. It is improper to view the simple expedient of "obviation" as an admission or acquiescence on the merits. *Ortho Pharmaceutical Corp. v. Smith*, 22 USPQ2d 1119, 1124 (Fed. Cir. 1992) citing *Quad Env'tl. Technologies Corp. v. Union Sanitary Dist.*, 946 F.2d 870, 874, 20 USPQ2d 1392, 1394-95 (Fed. Cir. 1991).

In view of the filing of the enclosed TD, this rejection is rendered moot.

Drawings

Applicants note that this application has been filed with one (1) sheet of Drawings. However, that Examiner has not acknowledged whether the Drawings are acceptable. Applicants respectfully request that the Examiner acknowledges whether the Drawings are acceptable in the next communication.

Conclusion

In view of the above-comments and the attached Terminal Disclaimer, Applicants respectfully submit that the claims are in condition for allowance. A notice to such effect is earnestly solicited.

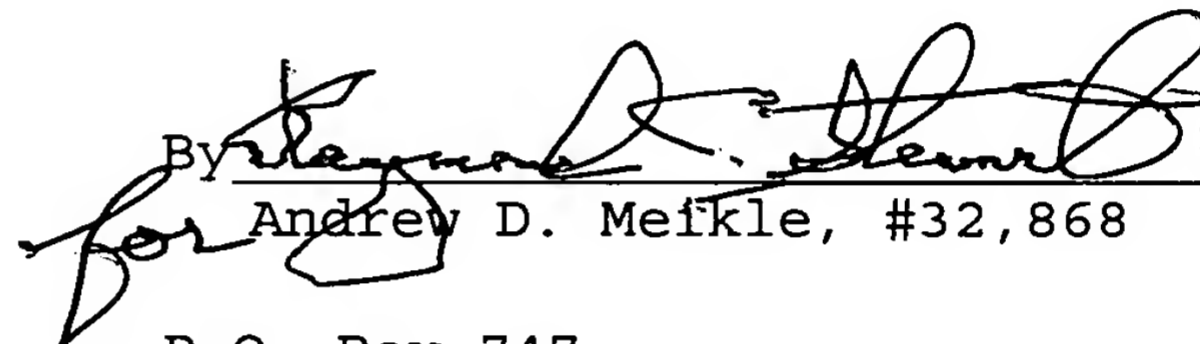
Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact **Garth M. Dahlen, Ph.D., Esq.** (Reg. No. 43,575) at the telephone number of the undersigned below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

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